

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OSCAR SANDERS, :

Plaintiff, :

-v- :

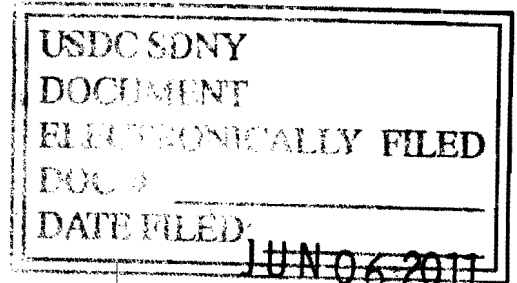
DEP. MOORE, *et al.*, :

Defendants. :

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GEORGE B. DANIELS, District Judge:

Pro se Plaintiff Oscar Sanders filed this complaint under 42 U.S.C. § 1983, alleging that he was physically assaulted by defendant Moore and other correctional officers while in custody at the Otis Bantum Correctional Center. This Court referred the matter to Magistrate Judge Debra Freeman for General Pretrial Supervision and a Report & Recommendation on any dispositive motions. Magistrate Judge Freeman sua sponte issued a Report & Recommendation ("Report") recommending that the Plaintiff's claims be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m), 12(b)(6), and 41(b) for failure to serve defendants, failure to otherwise prosecute the case, and for failure to exhaust available administrative remedies pursuant to the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a) respectively.

The Court may accept, reject or modify, in whole or in part, the findings and recommendations set forth within the Report. 28 U.S.C. § 636(b)(1). When there are objections to the Report, the Court must make a *de novo* determination of those portions of the Report to which objections are made. Id.; see also Rivera v. Barnhart, 432 F. Supp. 2d 271, 273 (S.D.N.Y. 2006). The district judge may also receive further evidence or recommit the matter to the magistrate judge with instructions. See FED. R. CIV. P. 72(b); 28 U.S.C. § 636(b)(1)(c). It is also



MEMORANDUM DECISION
AND ORDER
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not required, however, that the Court conduct a *de novo* hearing on the matter. See United States v. Raddatz, 447 U.S. 667, 676 (1980). Rather, it is sufficient that the Court “arrive at its own, independent conclusions” regarding those portions to which objections were made. Nelson v. Smith, 618 F.Supp. 1186, 1189-90 (S.D.N.Y. 1985) (quoting Hernandez v. Estelle, 711 F.2d 619, 620 (5th Cir. 1983)). When no objections to a Report are made, the Court may adopt the Report if “there is no clear error on the face of the record.” Adee Motor Cars, LLC v. Amato, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005) (citation omitted).

In her Report, Magistrate Judge Freeman advised Plaintiff that failure to file timely objections to the Report would constitute a waiver of those objections. See 28. U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). Plaintiff did not object to the Report.

Magistrate Judge Freeman’s conclusion that Plaintiff failed to effectuate proper service within 120 days or show good cause for his failure to do so is not facially erroneous. See *Conway v. Am. Red Cross*, No. 10-CV-1859, 2010 WL 4722279, at *5 (E.D.N.Y. Nov. 15, 2010). Despite Magistrate Judge Freeman’s multiple warnings, more than two years have passed and Plaintiff has not served any of the Defendants.

Regardless, Magistrate Judge Freeman’s conclusion that Plaintiff failed to exhaust the administrative remedies available to him prior to commencing this action is also not facially erroneous. See 42 U.S. C. § 1997e(a); *Booth v. Churner*, 532 U.S. 731, 738-39 (2001). It is well-established that pro se complaints are to be construed liberally, but even the most liberal reading of Plaintiff’s complaint indicates that Plaintiff is just beginning the grievance process at the prison. See *Triestman v. Federal Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (citation omitted); Report at 4-5. Magistrate Judge Freeman properly concluded that this provides an

independent basis for dismissing the complaint pursuant to the PLRA and Fed. R. Civ. P.

12(b)(6).

Because Magistrate Judge Freeman's conclusions are not facially erroneous, this Court adopts the Report & Recommendation. Plaintiff's Complaint is DISMISSED without prejudice.

Dated: June 6, 2011

New York, New York

SO ORDERED:

A handwritten signature in cursive script, reading "George B. Daniels", written in black ink over a horizontal line.

GEORGE B. DANIELS
United States District Judge